

**RECOMMENDATION OF ELECTRIC COOPERATIVES****DISTRIBUTION COOPERATIVES SELF-REGULATION**

*A BILL to amend and reenact §§ 56-6, 56-35, 56-36, 56-55, 56-76, 56-231.15, 56-231.33, 56-232, 56-256, 56-578, 56-580, 56-581, 56-582, and 56-585 of the Code of Virginia, and to amend the Code of Virginia by adding in Chapter 9.1 of Title 56 an article numbered 3, consisting of sections numbered 56-231.53 through 56-231.55, relating to utility consumer services cooperatives; self regulation.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 56-6, 56-35, 56-36, 56-55, 56-76, 56-231.15, 56-231.33, 56-232, 56-256, 56-578, 56-580, 56-581, 56-582, and 56-585 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 9.1 of Title 56 an Article numbered 3, consisting of sections numbered 56-231.53 through 56-231.55, as follows:**

§ 56-6. Remedies of persons aggrieved by public service corporation's violation of law.

Any person or corporation aggrieved by anything done or omitted in violation of any of the provisions of this or any other chapter under this title, by any public service corporation chartered or doing business in this Commonwealth, shall have the right to make complaint of the grievance and seek relief by petition against such public service corporation before the State Corporation Commission, sitting as a court of record. If the grievance complained of be established, the Commission, sitting as a court of record, shall have jurisdiction, by injunction, to restrain such public service corporation from continuing the same, and to enjoin obedience to the requirements of this law, and the Commission, sitting as a court of record, shall also have jurisdiction, by mandamus, to compel any public service corporation to observe and perform any public duty imposed upon public service corporations by the laws of this Commonwealth, subject as to any matter arising under this section to the right of appeal to the Supreme Court by either party as of right in the mode prescribed by law; but nothing in this section shall be construed to confer any power upon the Commission which is forbidden to the courts by § 56-429. The provisions of this section shall not apply to utility consumer services cooperatives subject to self regulation in accordance with Article 3 (§§ 56-231.53 et seq.) of Chapter 9.1 of this title.

§ 56-35. Regulation of public service companies.

The Commission shall have the power, and be charged with the duty, of supervising, regulating and controlling all public service companies doing business in this Commonwealth, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses therein by such companies. The provisions of this section shall not apply to utility consumer services cooperatives subject to self regulation in accordance with Article 3 (§§ 56-231.53 et seq.) of Chapter 9.1 of this title.

§ 56-36. Inspection of books and documents; special reports; rules and regulations to prevent unjust discrimination.

The Commission shall also have the right at all times to inspect the books, papers and documents of all public service companies doing business in this Commonwealth, and to require from such companies, from time to time, special reports and statements, under oath, concerning their business. It shall keep itself fully informed of the physical condition of all railroads of the Commonwealth, as to the manner in which they are operated, with reference to the security and accommodation of the public, and shall, from time to time, make and enforce such requirements, rules and regulations as may be necessary to prevent unjust or unreasonable discrimination by any public service company in favor of, or against, any person, locality, community, connecting line, or kind of traffic in the matter of car service, train or boat schedule, efficiency of transportation or otherwise, in connection with the public duties of such company. The provisions of this section shall not apply to utility consumer services cooperatives subject to self regulation in accordance with Article 3 (§§ 56-231.53 et seq.) of Chapter 9.1 of this title.

§ 56-55. Definitions.

The term "public service company" when used in this chapter shall mean every person, firm, corporation or association, or their lessees, trustees or receivers, other than a municipal corporation, now or hereafter engaged in business in this Commonwealth as a public utility and subject to regulation as to rates and service by the State Corporation Commission under the provisions of Chapter 10 (§ 56-232 et seq.) of this title; however, the term shall not include and the provisions of this chapter shall not be deemed to refer to common carrier railroad companies, the issuance of the stocks and securities of which are under regulation by the Interstate Commerce Commission. The term "public service company" shall not include and the provisions of this chapter shall not be deemed to refer to any utility consumer services cooperative that is self-regulated in accordance with the provisions of Article 3 (§§ 56-231.53 et seq.) of Chapter 9.1 of this title.

The term "total capitalization" as used in § 56-65.1 shall mean total common stockholders' equity (common stock, additional paid-in capital and retained earnings), preferred stock, and total debt (long- and short-term debt) as shown on the utility's books.

The terms "securities" and "loan" as used in §§ 56-68 and 56-75 shall include every obligation, written or otherwise, the issuance of, or entry into, which is required to be approved or validated by this chapter.

§ 56-76. Definitions.

The term "public service company" when used in this chapter shall mean every person, firm, corporation or association, or their lessees, trustees or receivers, other than a municipal corporation, now or hereafter engaged in business in this Commonwealth as a public utility and subject to regulation as to rates and service

1 by the State Corporation Commission under the provisions of Chapter 10 (§ [56-232](#)  
2 et seq.) of this title and, subject to the conditions specified therein, such companies  
3 as specified by the Commission pursuant to subsection C of § [56-77](#); however, the  
4 term shall not include and the provisions of this chapter shall not be deemed to  
5 refer to transportation companies subject directly or indirectly to the control of the  
6 Interstate Commerce Commission. For purposes of this chapter, the term "public  
7 service company" shall not include and the provisions of this chapter shall not be  
8 deemed to refer or apply to any utility consumer services cooperative that is self-  
9 regulated in accordance with the provisions of Article 3 (§§ 56-231.53 et seq.) of  
10 Chapter 9.1 of Title 56 of the Code of Virginia.

11 The term "affiliated interest" when used in this chapter shall mean and include the  
12 following:

13 1. Every corporation, partnership, association, or person owning or holding directly  
14 or indirectly ten percent or more of the voting securities of any public service  
15 company engaged in any intrastate business in this Commonwealth.

16 2. Every corporation, partnership, association, or person, other than those specified  
17 in subdivision 1 hereof, in any chain of successive ownership of ten percent or more  
18 of voting securities, the chain beginning with the holder or holders of the voting  
19 securities of such public service company.

20 3. Every corporation, partnership, association, or person ten percent or more of  
21 whose voting securities are owned by any person, corporation, partnership, or  
22 association owning ten percent or more of the voting securities of such public service  
23 company or by any person, corporation, association, or partnership in any such  
24 chain of successive ownership of ten percent or more of voting securities.

25 4. Every corporation, partnership, association, or person with which such public  
26 service company has a management or service contract.

27 5. Every corporation in which two or more of the corporate directors are common to  
28 those of such public service company, or which is managed or supervised by the  
29 same individual, group or corporation.

30 6. Every corporation or person which the Commission may determine as a matter of  
31 fact after investigation and hearing is actually exercising any substantial influence  
32 over the policies and actions of such public service company even though such  
33 influence is not based upon stockholding, stockholders, directors or officers to the  
34 extent specified in this section.

35 7. Every person or corporation which the Commission may determine as a matter of  
36 fact after investigation and hearing is actually exercising such substantial influence  
37 over the policies and action of such public service company in conjunction with one  
38 or more other corporations or persons with which or whom they are so connected or  
39 related by ownership or blood relationship or by action in concert that when taken  
40 together they are affiliated with such public service company within the meaning of  
41 this section even though no one of them alone is so affiliated.

42 But no such person or corporation shall be considered as affiliated within the  
43 meaning of this section if such person or corporation shall not have had transactions

1 or dealings other than the holding of stock and the receipt of dividends thereon with  
2 such public service company during the two-year period next preceding.

3  
4 § 56-231.15. Definitions.

5 The following terms, whenever used or referred to in this article, shall have the  
6 following meanings, unless a different meaning clearly appears from the context:

7 "Acquire" means and includes construct, or acquire by purchase, lease, devise, gift  
8 or the exercise of the power of eminent domain, or by other mode of acquisition.

9 "Affiliate" means a separate affiliated or subsidiary corporation or other separate  
10 legal entity.

11 "Board" means the board of directors of a cooperative formed under or subject to  
12 this article.

13 "Commission" means the State Corporation Commission of Virginia.

14 "Cooperative" means a utility consumer services cooperative formed under or  
15 subject to this article or a distribution cooperative formed under the former  
16 Distribution Cooperatives Act (§ [56-209](#) et seq.).

17 "Energy" means and includes any and all forms of energy no matter how or where  
18 generated or produced.

19 "Federal agency" means and includes the United States of America, the President of  
20 the United States of America, the Tennessee Valley Authority, the Federal  
21 Administrator of the Rural Utility Service, the Southeastern Power Administration,  
22 the Federal Energy Regulatory Commission, the Securities and Exchange  
23 Commission, the Federal Communications Commission and any and all other  
24 authorities, agencies, and instrumentalities of the United States of America,  
25 heretofore or hereafter created.

26 "HVACR" means heating, ventilation, air conditioning and refrigeration.

27 "Improve" means and includes construct, reconstruct, replace, extend, enlarge,  
28 alter, better or repair.

29 "Law" means any act or statute, general, special or local, of this Commonwealth.

30 "Member" means and includes each natural person signing the articles of  
31 incorporation of a cooperative and each person admitted to membership therein  
32 pursuant to law or its bylaws.

33 "Municipality" means any city or incorporated town of the Commonwealth.

34 "Obligations" means and includes bonds, interim certificates or receipts, notes,  
35 debentures, and all other evidences of indebtedness either issued by, or the  
36 payment of which is assumed or contractually undertaken by, a cooperative.

37 "Patronage capital" includes all amounts received by a cooperative from sales of  
38 electric power or electric distribution services, or both, to members in excess of the  
39 cooperative's cost of furnishing electric power or distribution services, or both, to  
40 members and such other margins as determined by the board of directors.

41 "Person" means and includes natural persons, firms, associations, cooperatives,  
42 corporations, limited liability companies, business trusts, partnerships, limited  
43 liability partnerships and bodies politic.

1 "Propane or fuel oil equipment" means equipment and related systems to store or  
2 use propane or fuel oil products.

3 "Regulated utility services" means utility services that are subject to regulation as  
4 to rates or service by the Commission.

5 "System" means and includes any plant, works, system, facilities, equipment or  
6 properties, or any part or parts thereof, together with all appurtenances thereto,  
7 used or useful in connection with the generation, production, transmission or  
8 distribution of energy or in connection with other utility services.

9 "Traditional cooperative activity" means any business, service or activity in which  
10 cooperatives in Virginia have traditionally engaged and that is incidental to and  
11 substantially related to the electric utility business conducted by a cooperative on or  
12 before July 1, 1999, provided that traditional cooperative activity does not include  
13 any program to (i) buy or maintain an inventory of HVACR equipment or household  
14 appliances; (ii) install or service any such equipment or household appliances for  
15 customers, unless such service is not provided by the cooperative but by a third  
16 party individual, firm or corporation licensed to perform such service; (iii) sell  
17 HVACR equipment or household appliances to customers metered and billed on  
18 residential rates; (iv) sell HVACR equipment to customers other than those metered  
19 and billed on residential rates except where such sale is an incidental part of  
20 providing other energy services or providing other traditional cooperative activities;  
21 (v) sell or distribute propane or fuel oil; sell, install or service propane or fuel oil  
22 equipment; or maintain or buy an inventory of propane or fuel oil equipment for  
23 resale; or (vi) serve as a coordinator of nonelectric energy services or provide  
24 engineering consulting services except when such energy or engineering services  
25 are an incidental part of a marketing effort to provide other energy or engineering  
26 services or as a part of providing services that are other traditional cooperative  
27 activities.

28 "Utility services" means any products, services and equipment related to energy,  
29 telecommunications, water and sewerage.

30  
31 § 56-231.33. Adequate service; rates.

32 Regulated utility services offered by a cooperative shall be reasonably adequate,  
33 subject to the regulations of the Commission, as provided in § 56-231.34; provided,  
34 however, that services offered by utility consumer services cooperatives that are  
35 self-regulated in accordance with Article 3 (§§ 56-231.53 et seq.) of Chapter 9.1 of  
36 this title are not subject to such Commission regulation. The charge made by any  
37 such cooperative for any regulated utility service rendered or to be rendered, either  
38 directly or in connection therewith, shall be nondiscriminatory, reasonable and just,  
39 and every discriminatory, unjust or unreasonable charge for such regulated utility  
40 service is prohibited and declared unlawful. Reasonable and just charges for service  
41 within the meaning of this section shall be such charges as shall produce sufficient  
42 revenue to pay all legal and other necessary expenses incident to the operation of  
43 the system, and shall include but not be limited to maintenance cost, operating  
44 charges, interest charges on bonds or other obligations, to recover such stranded



costs and transition costs as may be authorized in this title, to provide for the liquidation of bonds or other evidences of indebtedness, to provide adequate funds to be used as working capital, as well as reasonable reserves and funds for making replacements and also for the payment of any taxes that may be assessed against such cooperative or its property, it being the intent and purpose hereof that such charges shall produce an income sufficient to maintain such cooperative property in a sound physical and financial condition to render adequate and efficient service and additional amounts that must be realized by the cooperative to meet the requirement of any rate covenant with respect to coverage of principal of and interest on its debt contained in any indenture, mortgage, or other contract with holders of its debt, provided that any such indenture, mortgage or other contract must have been approved by the Commission pursuant to Chapter 3 (§ 56-55 et seq.) of this title. Any rate for regulated utility services that is too low to meet the foregoing requirements shall be unlawful.

### ARTICLE 3 – SELF REGULATION

#### § 56-231.53. Definitions.

##### As used in this article:

"Board" means the board of directors of a cooperative formed under or subject to this Article 1 of this chapter.

"Commission" means the State Corporation Commission of Virginia.

"Cooperative" means a utility consumer services cooperative formed under or subject to Article 1 of this chapter or a distribution cooperative formed under the former Distribution Cooperatives Act (§ 56-209 et seq.).

"Member" means any person that holds any class of membership in a cooperative.

"Person" means and includes natural persons, firms, associations, cooperatives, corporations, limited liability companies, business trusts, partnerships, limited liability partnerships and bodies politic.

"Referendum" means a referendum of the members in accordance with § 56-321.54.

"Self-regulating cooperative" means a cooperative that has elected self-regulation in accordance with this article.

"Self-regulation" means regulation by the board of a cooperative that has complied with the provisions of this article, rather than by the Commission, with respect to rates, service and other matters described in this article.

#### § 56-231.54 Self-regulation.

A. After July 1, 2001, within 45 days of the adoption by the board of a cooperative of a resolution recommending self-regulation, or within 45 days of the submission to the cooperative of a petition recommending self-regulation and signed by one percent or more of the members, the cooperative shall publish notice of a referendum for self regulation. The notice of referendum will pose the following question: "Shall the members of [name of cooperative], through the board, regulate the rates and services of the cooperative as set out in Va. Code §§ 56-231.53 -

1                     , and terminate the regulation of such rates and services by  
2 the State Corporation Commission of Virginia?"

3 B. The notice will set forth the time and place of an annual or special meeting, in  
4 accordance with Article 1 of this chapter and the bylaws of the cooperative, at which  
5 the referendum will be held. Notwithstanding any contrary provision in the charter  
6 or bylaws of the cooperative, the board may elect to accept mailed ballots on the  
7 referendum, and in such case, a mailed ballot will be included with the notice.

8 C. If **two thirds** of the votes cast on a referendum are affirmative, then the  
9 referendum shall pass.

10 D. Within 30 days of the passage of a referendum for self-regulation, the cooperative  
11 shall certify to the commission, the adoption of self-regulation by the cooperative.

12 E. Notwithstanding any other provision of law or regulation, upon certification of  
13 self-regulation, a cooperative will be exempted from §§ 56-6.56-36, 56-40, 56-55  
14 through 56-75, 56-76 through 56-87, 56-231.34, 56-233.1, 56-234, 56-234.2 through  
15 56-234.5, 56-235, 56-235.1 through 56-235.4, 56-236, 56-231.1, 56-237, 56-237  
16 through 56-240, 56-242 through 56-245, 56-247.1 through 56-249, 56-249.2 through  
17 56-249.7 and 56-265.

18 F. Notwithstanding §§ 56-90, 56-231.33, 56-580, **56-585**, or any other provision of  
19 law, the Commission shall not regulate the rates or service of a self-regulating  
20 cooperative.

21 G. Notwithstanding §§ 56-231.33 or any other provision of law, the Commission  
22 shall not regulate under Chapter 3 of this title any security or loan of a self-  
23 regulating cooperative.

24 H. Notwithstanding self-regulation, § 56-231.34:1 and § 56-231.34:2 shall apply to a  
25 self-regulating cooperative. For the purposes of applying § 56-231.34:1 and § 56-  
26 231.34:2 to a self-regulating cooperative, "Regulated utility services" shall mean  
27 utility services that were subject to regulation as to rates or service by the  
28 Commission, as of January 1, 2001.

29 I. Notwithstanding anything in this article, a self-regulating cooperative shall  
30 continue to be a public service corporation with the rights and duties assigned to  
31 public service corporations in §§ 56-2, 56-18, 56-19, 56-41.1, 56-43, 56-46.1, 56-46.2,  
32 56-49, **Chapter 5** of Title 56 (§§ 56-88 through 56-92), 56-236.2, 56-249.1, **Chapter**  
33 **10.1** of Title 56 (§§ 56-265.1 through 56-265.9), Chapter 10.3 of Title 56 (§§ 56-  
34 **265.14 through 56-265.32), 56-576, 56-56-577, 56-578, 56-581, 56-581.1, 56-582, 56-**  
35 **583, 56-585, 56-587, 56-588, 56-590, and 56-592.**

36 § 56-231.55 Resumption of Commission regulation.

37 A. A cooperative **that** has elected self-regulation **shall publish notice of a**  
38 **referendum for re-regulation** within 45 days **after** the adoption by the board of a  
39 **cooperative of a resolution recommending re-regulation, or after** the submission to  
40 **the cooperative of a petition recommending re-regulation and signed by one percent**  
41 **or more of the members. The notice of referendum will pose the following question:**  
42 **"Shall the State Corporation Commission regulate the rates and services of [name**  
43 **of cooperative] **and** terminate the regulation of such rates and services by the**  
44 **members of the cooperative acting through the board?"**

B. The notice will set forth the time and place of an annual or special meeting, in accordance with Article 1 of this chapter and the bylaws of the cooperative, at which the referendum will be held. Notwithstanding any contrary provision in the charter or bylaws of the cooperative, the board may elect to accept mailed ballots on the referendum, and in such case, a mailed ballot will be included with the notice.

C. If two thirds of the votes cast on a referendum are affirmative, then the referendum shall pass.

D. Within 30 days of the passage of a referendum for re-regulation, the cooperative shall certify to the commission, the adoption of re-regulation by the cooperative.

E. Within 60 days of certification of reregulation, a cooperative will file temporary rates, and a rate application, along with such supporting exhibits as shall be necessary for the Commission to resume regulation of the rates and services of the cooperative.

§ 56-232. Public utility and schedules defined.

The term "public utility" as used in §§ [56-233](#) to [56-240](#) and [56-246](#) to [56-250](#) shall mean and embrace every corporation (other than a municipality), company, individual, or association of individuals or cooperative, their lessees, trustees, or receivers, appointed by any court whatsoever, that now or hereafter may own, manage or control any plant or equipment or any part of a plant or equipment within the Commonwealth for the conveyance of telephone messages or for the production, transmission, delivery, or furnishing of heat, chilled air, chilled water, light, power, or water, or sewerage facilities, either directly or indirectly, to or for the public.

But the term "public utility" as herein defined shall not be construed to include any corporation created under the provisions of Title 13.1 unless the articles of incorporation expressly state that the corporation is to conduct business as a public service company. Notwithstanding any provision of law to the contrary, no person, firm, corporation, or other entity shall be deemed a public utility or public service company, solely by virtue of engaging in production, transmission, or sale at retail of electric power as a qualifying small power producer using renewable or nondepletable primary energy sources within the meaning of regulations adopted by the Federal Energy Regulatory Commission in implementation of the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617) and not exceeding 7.5 megawatts of rated capacity, nor solely by virtue of serving as an aggregator of the production of such small power producers, provided that the portion of the output of any qualifying small power producer which is sold at retail shall not be sold to residential consumers. No qualifying small power producer, within the meaning of regulations adopted by the Federal Energy Regulatory Commission, shall be deemed a public utility within the meaning of Chapter 7 (§ [62.1-80](#) et seq.) of Title 62.1. The term "public utility" as herein defined shall not be construed to include any chilled water air-conditioning cooperative serving residences in less than a one square mile area, or any company which is excluded from the definition of "public utility" by subdivision (b) (4) or (b) (8) of § [56-265.1](#). No utility consumer services



1 cooperative who has elected self-regulation in accordance with Article 3 (§§ 56-  
2 231.53 et seq.) of Chapter 9.1 of this title shall be deemed a public utility subject to  
3 the provisions of this chapter.

4 Subject to the provisions of § 56-232.1, the term "schedules" as used in §§ 56-234  
5 through 56-245 shall include schedules of rates and charges for service to the public  
6 and also contracts for rates and charges in sales at wholesale to other public  
7 utilities or for divisions of rates between public utilities, but shall not include  
8 contracts of telephone companies with the state government or contracts of other  
9 public utilities with municipal corporations or the federal or state government, or  
10 any contract executed prior to July 1, 1950.

11  
12 § 56-256. Powers of corporations generally; rights, powers, privileges and  
13 immunities, etc.

14 Every corporation organized for the purpose of: (1) constructing, maintaining, and  
15 operating an electric railway, or works, (2) supplying and distributing electricity for  
16 light, heat, or power, (3) producing, distributing, and selling steam, heat, or power,  
17 or compressed air, (4) producing, distributing and selling gas made of coal or other  
18 materials, (5) furnishing and distributing a water supply to any city or town, or (6)  
19 piping cold air outside of its plant, or (7) constructing and maintaining any public  
20 viaduct, bridge or conduit, shall, in addition to the powers conferred upon  
21 corporations generally, have all the rights, powers, privileges, and immunities, and  
22 be subject to all the rules, regulations, restrictions, pains, and penalties prescribed  
23 by §§ 56-458, 56-459 to 56-462, 56-466, 56-467 and 56-484, which sections shall  
24 apply to, and as far as practicable, operate upon the corporations mentioned in this  
25 section, unless otherwise provided. Notwithstanding the definition of "public utility"  
26 contained in § 56-232, any utility consumer services cooperative who has elected  
27 self-regulation in accordance with Article 3 (§§ 56-231.53 et seq.) of Chapter 9.1 of  
28 this title shall have all the rights, powers, privileges, and immunities, and be  
29 subject to all the rules, regulations, restrictions, pains, and penalties prescribed by  
30 §§ 56-458, 56-459 to 56-462, 56-466, 56-467 and 56-484.

31  
32 § 56-578. Nondiscriminatory access to transmission and distribution system.

33 A. All distributors shall have the obligation to connect any retail customer,  
34 including those using distributed generation, located within its service territory to  
35 those facilities of the distributor that are used for delivery of retail electric energy,  
36 subject to Commission rules and regulations and approved tariff provisions relating  
37 to connection of service.

38 B. Except as otherwise provided in this chapter, every distributor shall provide  
39 distribution service within its service territory on a basis which is just, reasonable,  
40 and not unduly discriminatory to suppliers of electric energy, including distributed  
41 generation, as the Commission may determine. The distribution services provided  
42 to each supplier of electric energy shall be comparable in quality to those provided  
43 by the distribution utility to itself or to any affiliate. The Commission shall  
44 establish rates, terms and conditions for distribution service under Chapter 10 (§

1 [56-232](#) et seq.) of this title except for distribution services provided by a utility  
2 consumer services cooperative who has elected self-regulation in accordance with  
3 Article 3 (§§ 56-231.53 et seq.) of Chapter 9.1 of this title.

4 C. The Commission shall establish interconnection standards to ensure  
5 transmission and distribution safety and reliability, which standards shall not be  
6 inconsistent with nationally recognized standards acceptable to the Commission. In  
7 adopting standards pursuant to this subsection, the Commission shall seek to  
8 prevent barriers to new technology and shall not make compliance unduly  
9 burdensome and expensive. The Commission shall determine questions about the  
10 ability of specific equipment to meet interconnection standards.

11 D. The Commission shall consider developing expedited permitting processes for  
12 small generation facilities of fifty megawatts or less. The Commission shall also  
13 consider developing a standardized permitting process and interconnection  
14 arrangements for those power systems less than 500 kilowatts which have  
15 demonstrated approval from a nationally recognized testing laboratory acceptable  
16 to the Commission.

17 E. Upon the separation and deregulation of the generation function and services of  
18 incumbent electric utilities, the Commission shall retain jurisdiction over utilities'  
19 electric transmission function and services, to the extent not preempted by federal  
20 law. Nothing in this section shall impair the Commission's authority under §§ [56-](#)  
21 [46.1](#), [56-46.2](#), and [56-265.2](#) with respect to the construction of electric transmission  
22 facilities.

23 F. If the Commission determines that increases in the capacity of the transmission  
24 systems in the Commonwealth, or modifications in how such systems are planned,  
25 operated, maintained, used, financed or priced, will promote the efficient  
26 development of competition in the sale of electric energy, the Commission may, to  
27 the extent not preempted by federal law, require one or more persons having any  
28 ownership or control of, or responsibility to operate, all or part of such transmission  
29 systems to:

- 30 1. Expand the capacity of transmission systems;
- 31 2. File applications and tariffs with the Federal Energy Regulatory Commission  
32 (FERC) which (i) make transmission systems capacity available to retail sellers or  
33 buyers of electric energy under terms and conditions described by the Commission  
34 and (ii) require owners of generation capacity located in the Commonwealth to bear  
35 an appropriate share of the cost of transmission facilities, to the extent such cost is  
36 attributable to such generation capacity;
- 37 3. Enter into a contract with, or provide information to, a regional transmission  
38 entity; or
- 39 4. Take such other actions as the Commission determines to be necessary to carry  
40 out the purposes of this chapter.

41 G. If the Commission determines, after notice and opportunity for hearing, that a  
42 person has or will have, as a result of such person's control of electric generating  
43 capacity or energy within a transmission constrained area, market power over the  
44 sale of electric generating capacity or energy to retail customers located within the

Commonwealth, the Commission may, to the extent not preempted by federal law and to the extent that the Commission determines market power is not adequately mitigated by rules and practices of the applicable regional transmission entity having responsibility for management and control of transmission assets within the Commonwealth, adjust such person's rates for such electric generating capacity or energy, only within such transmission-constrained area and only to the extent necessary to protect retail customers from such market power. Such rates shall remain regulated until the Commission, after notice and opportunity for hearing, determines that the market power has been mitigated.

§ 56-580. Transmission and distribution of electric energy.

A. The Commission shall continue to regulate pursuant to this title the distribution of retail electric energy to retail customers in the Commonwealth and, to the extent not prohibited by federal law, the transmission of electric energy in the Commonwealth.

B. The Commission shall continue to regulate, to the extent not prohibited by federal law, the reliability, quality and maintenance by transmitters and distributors of their transmission and retail distribution systems.

C. The Commission shall develop codes of conduct governing the conduct of incumbent electric utilities and affiliates thereof when any such affiliates provide, or control any entity that provides, generation, distribution, transmission or any services made competitive pursuant to § [56-581.1](#), to the extent necessary to prevent impairment of competition.

D. The Commission may permit the construction and operation of electrical generating facilities upon a finding that such generating facility and associated facilities including transmission lines and equipment (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility and (ii) are not otherwise contrary to the public interest. In review of its petition for a certificate to construct and operate a generating facility described in this subsection, the Commission shall give consideration to the effect of the facility and associated facilities, including transmission lines and equipment, on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § [56-46.1](#).

E. Nothing in this section shall impair the distribution service territorial rights of incumbent electric utilities, and incumbent electric utilities shall continue to provide distribution services within their exclusive service territories as established by the Commission. Nothing in this chapter shall impair the Commission's existing authority over the provision of electric distribution services to retail customers in the Commonwealth including, but not limited to, the authority contained in Chapters 10 (§ [56-232](#) et seq.) and 10.1 (§ [56-265.1](#) et seq.) of this title. Such authority shall not extend to distribution services provided by a utility consumer services cooperative who has elected self-regulation in accordance with Article 3 (§§ [56-231.53](#) et seq.) of Chapter 9.1 of this title.

F. Nothing in this chapter shall impair the exclusive territorial rights of an electric utility owned or operated by a municipality as of July 1, 1999, nor shall any provision of this chapter apply to any such electric utility unless (i) that municipality elects to have this chapter apply to that utility or (ii) that utility, directly or indirectly, sells, offers to sell or seeks to sell electric energy to any retail customer outside the geographic area that was served by such municipality as of July 1, 1999.

§ 56-581. Regulation of rates subject to Commission's jurisdiction.

A. Subject to the provisions of § [56-582](#), the Commission shall regulate the rates for the transmission of electric energy, to the extent not prohibited by federal law, and for the distribution of electric energy, subject to the provisions of Article 3 (§§ 56-231.53 et seq.) of Chapter 9.1 of this title, to such retail customers on an unbundled basis, but, subject to the provisions of this chapter after the date of customer choice, the Commission no longer shall regulate rates and services for the generation component of retail electric energy sold to retail customers.

B. Beginning July 1, 1999, and thereafter, no cooperative that was a member of a power supply cooperative on January 1, 1999, shall be obligated to file any rate rider as a consequence of an increase or decrease in the rates, other than fuel costs, of its wholesale supplier, nor must any adjustment be made to such cooperative's rates as a consequence thereof.

C. Except for the provision of default services under § [56-585](#) or emergency services in § [56-586](#), nothing in this chapter shall authorize the Commission to regulate the rates or charges for electric service to the Commonwealth and its municipalities.

§ 56-582. Rate caps.

A. The Commission shall establish capped rates, effective January 1, 2001, and expiring on July 1, 2007, for each service territory of every incumbent utility as follows:

1. Capped rates shall be established for customers purchasing bundled electric transmission, distribution and generation services from an incumbent electric utility.

2. Capped rates for electric generation services, only, shall also be established for the purpose of effecting customer choice for those retail customers authorized under this chapter to purchase generation services from a supplier other than the incumbent utility during this period.

3. The capped rates established under this section shall be the rates in effect for each incumbent utility as of the effective date of this chapter, or rates subsequently placed into effect pursuant to a rate application filed by an incumbent electric utility with the Commission prior to January 1, 2001, and subsequently approved by the Commission, and made by an incumbent electric utility that is not currently bound by a rate case settlement adopted by the Commission that extends in its application beyond January 1, 2002. If such rate application is filed, the rates proposed therein shall go into effect on January 1, 2001, but such rates shall be

interim in nature and subject to refund until such time as the Commission has completed its investigation of such application. Any amount of the rates found excessive by the Commission shall be subject to refund with interest, as may be ordered by the Commission. The Commission shall act upon such applications prior to commencement of the period of transition to customer choice. Such rate application and the Commission's approval shall give due consideration, on a forward-looking basis, to the justness and reasonableness of rates to be effective for a period of time ending as late as July 1, 2007. The capped rates established under this section, which include rates, tariffs, electric service contracts, and rate programs (including experimental rates, regardless of whether they otherwise would expire), shall be such rates, tariffs, contracts, and programs of each incumbent electric utility, provided that experimental rates and rate programs may be closed to new customers upon application to the Commission.

B. The Commission may adjust such capped rates in connection with the following: (i) utilities' recovery of fuel costs pursuant to § [56-249.6](#), (ii) any changes in the taxation by the Commonwealth of incumbent electric utility revenues, (iii) any financial distress of the utility beyond its control, (iv) with respect to cooperatives that were not members of a power supply cooperative on January 1, 1999, and as long as they do not become members, their cost of purchased wholesale power and discounts from capped rates to match the cost of providing distribution services, and (v) with respect to cooperatives that were members of a power supply cooperative on January 1, 1999, their recovery of fuel costs, through the wholesale power cost adjustment clauses of their tariffs pursuant to § 56-226. Notwithstanding the provisions of § [56-249.6](#), the Commission may authorize tariffs that include incentives designed to encourage an incumbent electric utility to reduce its fuel costs by permitting retention of a portion of cost savings resulting from fuel cost reductions or by other methods determined by the Commission to be fair and reasonable to the utility and its customers.

C. A utility may petition the Commission to terminate the capped rates to all customers any time after January 1, 2004, and such capped rates may be terminated upon the Commission finding of an effectively competitive market for generation services within the service territory of that utility. If the capped rates are continued after January 1, 2004, an incumbent electric utility which is not, as of the effective date of this chapter, bound by a rate case settlement adopted by the Commission that extends in its application beyond January 1, 2002, may petition the Commission for approval of a one-time change in the nongeneration components of such rates. If the capped rates are continued after January 1, 2004, a utility consumer services cooperative who has elected self-regulation in accordance with Article 3 (§§ 56-231.53 et seq.) of Chapter 9.1 of this title may adopt a one-time change in the nongeneration components of such rates.

D. Until the expiration or termination of capped rates as provided in this section, the incumbent electric utility, consistent with the functional separation plan implemented under § [56-590](#), shall make electric service available at capped rates



established under this section to any customer in the incumbent electric utility's service territory, including any customer that, until the expiration or termination of capped rates, requests such service after a period of utilizing service from another supplier.

E. During the period when capped rates are in effect for an incumbent electric utility, such utility may file with the Commission a plan describing the method used by such utility to assure full funding of its nuclear decommissioning obligation and specifying the amount of the revenues collected under either the capped rates, as provided in this section, or the wires charges, as provided in § 56-583, that are dedicated to funding such nuclear decommissioning obligation under the plan. The Commission shall approve the plan upon a finding that the plan is not contrary to the public interest.

#### § 56-585. Default service.

A. The Commission shall, after notice and opportunity for hearing, (i) determine the components of default service and (ii) establish one or more programs making such services available to retail customers requiring them commencing with the date of customer choice for all retail customers established pursuant to § 56-577. For purposes of this chapter, "default service" means service made available under this section to retail customers who (i) do not affirmatively select a supplier, (ii) are unable to obtain service from an alternative supplier, or (iii) have contracted with an alternative supplier who fails to perform.

B. The Commission shall designate the providers of default service. In doing so, the Commission:

1. Shall take into account the characteristics and qualifications of prospective providers, including cost, experience, safety, reliability, corporate structure, access to electric energy resources necessary to serve customers requiring such services, and other factors deemed necessary to protect the public interest;
2. May, upon a finding that the public interest will be served, designate one or more willing providers to provide one or more components of such services, in one or more regions of the Commonwealth, to one or more classes of customers; and
3. In the absence of a finding under subdivision 2, may require an incumbent electric utility or distribution utility to provide one or more components of such services, or to form an affiliate to do so, in one or more regions of the Commonwealth, at rates which are fairly compensatory to the utility and which reflect any cost of energy prudently procured, including energy procured from the competitive market; however, the Commission may not require an incumbent electric utility or distribution utility, or affiliate thereof, to provide any such services outside the territory in which such utility provides service.

C. The Commission shall, after notice and opportunity for hearing, determine the rates, terms and conditions for such services consistent with the provisions of subdivision B 3 and Chapter 10 (§ 56-232 et seq.) of this title and shall establish such requirements for providers and customers as it finds necessary to promote the reliable and economic provision of such services and to prevent the inefficient use of

1 such services. The Commission may use any rate method that promotes the public  
2 interest and may establish different rates, terms and conditions for different classes  
3 of customers.

4 D. On or before July 1, 2004, and annually thereafter, the Commission shall  
5 determine, after notice and opportunity for hearing, whether there is a sufficient  
6 degree of competition such that the elimination of default service for particular  
7 customers, particular classes of customers or particular geographic areas of the  
8 Commonwealth will not be contrary to the public interest. The Commission shall  
9 report its findings and recommendations concerning modification or termination of  
10 default service to the General Assembly and to the Legislative Transition Task  
11 Force, not later than December 1, 2004, and annually thereafter.

12 E. A distribution electric cooperative, or one or more affiliates thereof, shall have  
13 the obligation and right to be the supplier of default services in its certificated  
14 service territory. Such default services, for the purposes of this subsection, shall  
15 include the supply of electric energy and all services made competitive pursuant to  
16 [§ 56-581.1. Notwithstanding subsections A through D of this section, a utility](#)  
17 [consumer services cooperative who has elected self-regulation in accordance with](#)  
18 [Article 3 \(§§ 56-231.53 et seq.\) of Chapter 9.1 of this title, shall establish and](#)  
19 [regulate its own default rates, and the Commission shall have no authority to](#)  
20 [determine or regulate such rates.](#) If a distribution electric cooperative, or one or  
21 more affiliates thereof, elects or seeks to be a default supplier [in the service](#)  
22 [territory](#) of another electric utility, then the Commission shall designate the default  
23 supplier for [the service territory of](#) that distribution electric cooperative, or any  
24 affiliate thereof, pursuant to subsection B.

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